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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,167	04/22/2004	Gerhard Ehmgig	DT-6797	8102
30377 7590 10/02/2007 DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			EXAMINER ELDRED, JOHN W	
			ART UNIT 3641	PAPER NUMBER
			MAIL DATE 10/02/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/830,167

**Applicant(s)**

EHMIG ET AL.

**Examiner**

/J. Woodrow Eldred/

**Art Unit**

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over MacVicar (6,247,626) in view of Thielman et al (2004/0215407).

MacVicar discloses an explosion-driven setting tool (10), comprising a setting mechanism (piston 16) driven by propellant (propane in canister 34), ignition means (82), a receptacle for holding the propellant (canister 34), receiver for canister (tool's body around canister 34), data storage identification unit (fig. 23, 300) in which propellant supply level is stored (fig. 23, "fuel pressure sensor"), a display (fig. 23, user interface module and visual display), a data communication interface (eeprom; column 14, line 66 to column 15, line 15, which depicts the use of eeprom for the storage and processing of various inputs, including vessel pressure), the data processing unit (microprocessor detailed in figure 23) data storage identification unit (fuel control circuit in figure 17). Note especially column 15, lines 25-31 and 42-64 for disclosure of the storage of propellant level and data read-out from the storage. MacVicar fails to teach the data storage identification unit affixed to the propellant housing or the details of the data communication interface. Thielman et al teach that it is known to have fuel level sensor systems mounted on the housing of the fuel to measure and record the level of the fuel (disclosed as various types and physical states) and means (including contact elements and antennas) to read-out the fuel data to a processing system. See especially Paragraphs 23, 35, and 39 of Thielman et al. Motivation to combine is the mere substitution of the placement of the data storage location (with the attendant advantage of having the fuel data physically attached to a portable fuel housing) and the employment of known data transfer systems to move the data from storage to a processing system. To employ the

teachings of Thielman et al on the setting tool of MacVicar and have the claimed data storage and transfer system is considered to have been obvious to one having ordinary skill in the art.

3. Applicant's arguments filed 7-17-07 have been fully considered but they are not persuasive. Applicant begins by assuming that the proposed combination is the direct substitution of the fuel container of Thielman for the canister of MacVicar and then argues that the combination will not operate properly and, thus, teaches away from the combination of references. However, the initial assumption is incorrect. The rejection is not based on substitution of parts from Thielman into MacVicar. Instead, the rejection clearly states that Thielman is being used to teach that it is known to place fuel level sensor systems on a fuel housing and thus a substitution of the placement of the fuel level sensor system is made, with provision for communicating the data. The elements of MacVicar are merely being moved to a different location (i.e. the fuel container) with the attendant advantages noted above.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to /J. Woodrow Eldred/ whose telephone number is 571-272-6901. The examiner can normally be reached on Monday to Thursday, from 8:00 a.m. to 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571-272-6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Woodrow Eldred/  
Primary Examiner  
Art Unit 3641

JWE